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EXAMINER

LOFTIS, JOHNNA RONEE

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. The following is a final office action upon examination of application number 10/605715. Claims 1-43 and 45 are pending and have been examined on the merits discussed below.

Response to Arguments

2. Applicant's arguments, with respect to rejections of claims 1-22 under 35 USC 101 have been fully considered and are persuasive. The rejection under 35 USC 101 of claims 1-22 has been withdrawn. As evidenced by applicant arguments in the last response, the specification does not limit the system to software and is thereby statutory under 35 USC 101.

3. Applicant's arguments filed with respect to previous rejection of claims 23-32 under 35 USC 101 have been fully considered but they are not persuasive. The claims, as written, are not statutory under 35 USC 101. See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008). as clarified in *Bilski*, the test for a method claims is whether the claimed method is (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render

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an otherwise ineligible method claim patent eligible. The apparatus must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting is not sufficient to pass the test. In the instant case the method claims are not tied to another statutory class and are thus found to be non statutory under 35 USC 101.

4. In response to the amended claims, Examiner asserts the amendment introduced matter which is not supported by the specification and thereby raises new rejections under 35 USC 112. At least in column 3, line 59 – column 4, line 4, the specification explicitly states the work reports are used for controlling corrosion as the enterprise, structural or element levels.

5. Applicant's argument with respect to Greenfield not teaching an expected performance report, Examiner points out that the claims actually recite that the reports include "data *indicative* of expected performance". This, given the broadest reasonable interpretation is construed to be any data that *indicates* performance. Since Greenfield teaches at column 12, lines 53-65 – performance reports and at column 2, lines 26-30 – performance of installed coating and lining, previous rejections are upheld.

6. With respect to claim 16, Examiner points to column 12 lines 25-67 wherein costs are recalculated based on changing information. Inherently any changes to the schedule will incur costs whether upfront or deferred. If work is pushed out these costs are deferred. Previous rejection under Greenfield is upheld

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7. With respect to claim 21, Applicant argues Greenfield does not teach determining priority for maintenance. Examiner points to column 12 wherein priority lists are disclosed. In the context of the Greenfield reference it is clear that the priority lists refer to the priority rank for each component in the maintenance system. Previous rejections are upheld.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 1-43 and 45 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims now recite the work reports summarize recommended work for controlling corrosion at the enterprise, structural and element level. This is not supported in the specification. The specification recites the work reports are for controlling corrosion at the enterprise, structural or element levels.

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. Claims 23-32 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent eligible. The apparatus must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting is not sufficient to pass the test.

Applicant's method steps fail the first prong of the new Federal Circuit decision since they recite a mere field-of-use. Thus, claims 23-32 are non-statutory.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1, 5-21, 23, 27-34 and 38-43 rejected under 35 U.S.C. 102(b) as being anticipated by Greenfield et al, US 5,737,227.

As per claim 1, Greenfield et al teaches data collection for storing data in a database and the step of producing reports from said stored data (column 7, lines 33-67 – storage of collected information in computer system); said step of producing reports includes the step of producing summary recommended work reports summarizing recommended work for controlling corrosion at the enterprise, structural or element levels (abstract and column 3, line 59 – column 4, line 4 – data collection and report generation); computer system (column 7, lines 33-52).

As per claim 5, Greenfield et al teaches producing summary work reports includes the step of producing for at least one summary work report, listing the recommended work in at least one time defined forecast, or a report of the cost of deferring any part of said recommended work (table 4 - data operations includes reporting cost and schedule data as well as preparation of work packages); computer system (column 7, lines 33-52).

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As per claim 6, Greenfield et al teaches producing a report listing the recommended work in at least one time defined forecast, includes the step of producing a plurality of said time defined forecast reports or separate respective time periods (column 3, line 59 – column 4, line 4 – forecasting of maintenance work using interactive screens and data generating reports); computer system (column 7, lines 33-52).

As per claim 7, Greenfield et al teaches producing summary recommended work reports at said element level includes the step of producing at said element level, at least a coating system performance report or optimum work schedule report, or deferred work report or completed work report (column 12, lines 53-65 – coating performance reporting); computer system (column 7, lines 33-52).

As per claim 8, Greenfield et al teaches storing data indicative of condition evaluation of at least one element and or respective corrosion action for a respective element at a defined degradation level (column 11, table 8, storage of condition of material as well as evaluation for repair to prevent further degradation); computer system (column 7, lines 33-52).

As per claim 9, Greenfield et al teaches storing data indicative of corrosion control standards for costs, actions, or expected service life (column 5, table 3 – coating system standards); computer system (column 7, lines 33-52).

As per claim 10, Greenfield et al teaches means for data collection includes means for storing element data indicative of a respective element and of said respective element's total area, or event type, or date or condition grade, or percentage repair area, or coating system or critical inspection items or digital photographs (column 8, lines 1-29 – inspection information including defects (condition) as well as photographs).

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As per claim 11, Greenfield et al teaches storing element data indicative of a respective element and of said respective element's total area, or event type, or date or condition grade or percentage repair area or coating system or critical inspection items or digital photographs and said step of producing summary recommended work reports at said element level include the step of using at least some of the element data and at least some of said data indicative of corrosion control standards for producing budget estimates or maintenance actions (column 8, lines 1-29 – inspection information including defects (condition) as well as photographs; column 3, line 59 – column 4, line 4 – forecasting of maintenance work using interactive screens and data generating reports); computer system (column 7, lines 33-52).

As per claim 12, Greenfield et al teaches producing summary reports, includes means for producing structure reports by including at least a plurality of elements in said respective structure (abstract – assets include structures; column 4, step 100 – asset grouping; column 7, lines 52-63 - asset information is entered; abstract and column 3, line 59 – column 4, line 4 – data collection and report generation).

As per claim 13, Greenfield et al teaches means for storing data indicative of corrosion control standards, includes means for storing data indicative of an identifier and one or more standards of surface preparation requirements, primer coat, second coat, third coat, finish coat, installed cost, touch-up costs, refresh costs, restore costs, specific use identifier, initial condition factor or degradation rate factor (column 5, table 3 - coating systems standards).

As per claim 14, Greenfield et al teaches means for producing summary recommended work reports includes means for producing an optimum maintenance

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scheduling report, responsive to at least one selected element, selected acceptable condition grade, condition grade expected in relation to the related installed coating system for the respective element, providing actions or budget estimates (column 8, lines 1-29 – inspection information including defects (condition) as well as photographs; column 3, line 59 – column 4, line 4 – forecasting of maintenance work using interactive screens and data generating reports; column 2, lines 20-25 – maintenance planning and budget estimates).

As per claim 15, Greenfield et al teaches means for producing summary recommended work reports includes means for producing a material performance report for comparing the performance of an applied corrosion control system with expected performance for said applied system and including means for combining element data for at least one selected element, said element data including actual condition grade data, with data indicative of expected performance for said element with said applied system (column 12, lines 53-65 – performance reports; column 2, lines 26-30 – performance of installed coating and lining systems are reported).

As per claim 16, Greenfield et al teaches the means for producing summary recommended work reports includes means for producing a cost of deferring work report including data indicative of at least one selected element, a selected deferral period, data indicative of the expected performance of a corrosion control system applied to said selected element, means responsive to said element data and said expected performance data for calculating future costs of deferred maintenance (column 13, lines 53-65 maintenance and cost reports).

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As per claim 17, Greenfield et al teaches means for producing summary recommended work reports includes means for producing a completed work report responsive to element data indicative of the element name, and a completed event type or completed event date or costs of completion (table 10, scheduled work and calculated costs).

As per claim 18, Greenfield et al teaches means for producing a summary recommended work report includes means for using at least some of said element data and at least some of said data indicative of corrosion control standards for producing budget estimates for a selected element and for comparing said budget estimates with said costs of completion for said selected element (column 5, table 3 – coating system standards used in conjunction with work planning table 4 wherein budgetary requirements are considered).

As per claim 19, Greenfield et al teaches means for producing reports includes means for producing a critical inspection attribute report; said means for producing said critical inspection action report including means for using element data indicative of critical inspection items, maintenance actions performed or completed for at least one element (column 4, table 1, lists whether element is critical; table 6 criticality is entered).

As per claim 20, Greenfield et al teaches means for producing optimum maintenance scheduling report includes means for using said selected element, condition grades acceptable before maintenance is to be performed and wherein said condition grades expected is derived from data indicative of said coating system installed for said selected element (column 12, lines 53-65 – maintenance activity reports column 5, table 2, based on defects or condition of material inspection frequency is set).

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As per claim 21, Greenfield et al teaches means for producing summary recommended work reports includes means for maintenance priority reports including means for using element data for at least one selected element, indicative of priority, refresh or restore costs, and means for determining the priority of maintenance for said selected element based on designated allocation of maintenance budget (column 12, lines 53-65 – master asset or subcomponent priority lists).

As per claim 23, Greenfield et al teaches data collection for storing data in a database and the step of producing reports from said stored data (column 7, lines 33-67 – storage of collected information in computer system); said step of producing reports includes the step of producing summary recommended work reports summarizing recommended work for controlling corrosion at the enterprise, structural or element levels (abstract and column 3, line 59 – column 4, line 4 – data collection and report generation).

As per claim 27, Greenfield et al teaches producing summary work reports includes the step of producing for at least one summary work report, listing the recommended work in at least one time defined forecast, or a report of the cost of deferring any part of said recommended work (table 4 - data operations includes reporting cost and schedule data as well as preparation of work packages).

As per claim 28, Greenfield et al teaches producing a report listing the recommended work in at least one time defined forecast, includes the step of producing a plurality of said time defined forecast reports or separate respective time periods (column 3, line 59 – column 4, line 4 – forecasting of maintenance work using interactive screens and data generating reports).

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As per claim 29, Greenfield et al teaches producing summary recommended work reports at said element level includes the step of producing at said element level, at least a coating system performance report or optimum work schedule report, or deferred work report or completed work report (column 12, lines 53-65 – coating performance reporting).

As per claim 30, Greenfield et al teaches storing data indicative of condition evaluation of at least one element and or respective corrosion action for a respective element at a defined degradation level (column 11, table 8, storage of condition of material as well as evaluation for repair to prevent further degradation).

As per claim 31, Greenfield et al teaches storing data indicative of corrosion control standards for costs, actions, or expected service life (column 5, table 3 – coating system standards).

As per claim 32, Greenfield et al teaches storing element data indicative of a respective element and of said respective element's total area, or event type, or date or condition grade or percentage repair area or coating system or critical inspection items or digital photographs and said step of producing summary recommended work reports at said element level include the step of using at least some of the element data and at least some of said data indicative of corrosion control standards for producing budget estimates or maintenance actions (column 8, lines 1-29 – inspection information including defects (condition) as well as photographs; column 3, line 59 – column 4, line 4 – forecasting of maintenance work using interactive screens and data generating reports).

As per claim 33 Greenfield et al teaches a database adapted to store data indicative of a facility and elements within said facility subject to corrosion (table 1); said

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database adapted to store data indicative of corrosion control standards for controlling corrosion on said elements (table 3); said data processor adapted to access said data in said database to produce data indicative of reports of corrosion control plans for said elements (table 4 data operation reports).

As per claim 34, Greenfield et al teaches the database is adapted to include data indicative of at least one structure comprising a plurality of elements or an enterprise comprising a plurality of structures and said data processor is adapted to produce at least one summary recommended work report summarizing recommended work for controlling corrosion at the enterprise, structural or element level (table 4)

As per claim 38, Greenfield et al teaches said database is adapted to store data indicative of corrosion control standards for surface preparation requirements, primer coat, second coat, third coat, finish coat, installed cost, touch-up costs, refresh costs, restore costs, specific use identifier, initial condition factor or degradation rate factor (table 3 coating systems standards).

As per claim 39, Greenfield et al teaches data processor responsive to said data indicative of said elements and said corrosion control standards is adapted to produce data indicative of at least one optimum maintenance scheduling report including budget estimates or scheduled actions (column 12, lines 53-65 – maintenance activity report).

As per claim 40, Greenfield et al teaches data processor responsive to said data indicative of said elements and said corrosion control standards is adapted to produce data indicative of at least one material performance report comparing the performance of an applied corrosion control system with expected performance for said applied corrosion control system (column 13, lines 53-65 – coating use and performance list report).

As per claim 41, Greenfield et al teaches data processor is adapted to access said data in said database to produce data indicative of reports of corrosion control plans for said elements, is adapted to produce data indicative of cost of deferring work including data indicative of at least one selected element, a selected deferral period, data indicative of the expected performance of a corrosion control system applied to said selected element, and responsive to said element data and said expected performance data, data indicative of the future costs of deferred maintenance (column 13, lines 53-65 maintenance and cost reports).

As per claim 42, Greenfield et al teaches database is adapted to store element data indicative of a respective element and of said respective element's total area, or event type, or date or condition or grade, or percentage repair area or coating system or critical inspection items or digital photographs (column 10, table 6, for example, criticality, total surface area, date, component type).

As per claim 43, Greenfield et al teaches data processor adapted to access said data in said database indicative of at least one corrosion control standard for at least one selected element is adapted to produce data indicative of maintenance priority report, responsive to said element and standard data (column 13, lines 53-65 – maintenance report; also table 4 – data operations reports).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2-4, 22, 24-26, 35-37 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenfield et al, US 5,737,227.

As per claim 2, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4; computer system - column 7, lines 33-52), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

As per claim 3, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4; computer system - column 7, lines 33-52), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of

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ordinary skill in the art would have recognized the results of the combination were predictable.

As per claim 4, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4 and column 12, lines 53-65; computer system - column 7, lines 33-52), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

As per claim 22, Greenfield et al teaches means for producing scale responsive to said coating system performance report (column 4, table 2 - performance data indicates substrate condition and coating integrity on a scale; ie. structurally failed and poor integrity), but does not explicitly teach producing an alarm. Examiner takes official notice that it is old and well known to include alarms or other indications when reporting data. In the case of material coating, it would have been obvious to one of ordinary skill in the art at the time of the invention to include an alarm when performance of a coated material is substandard as a way to quickly notify appropriate personnel. By incorporating an alarm into the method and system of Greenfield recommendations can be made to remedy the coatings.

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As per claim 24, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

As per claim 25, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

As per claim 26, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4 and column 12, lines 53-65), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to

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secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

As per claim 35, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

As per claim 36, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

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As per claim 37, Greenfield et al teaches data collection, analyzing data and generating reports (column 3, line 59 – column 4, line 4), but does not explicitly teach producing log on screens to access such data. Official notice is taken that at the time of the instant invention it would have been obvious to one of ordinary skill in the art to incorporate secure access with log on screens as a way to secure data and restrict access to only those users with access rights since the instant invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized the results of the combination were predictable.

As per claim 44, Greenfield et al teaches means for producing scale responsive to said coating system performance report (column 4, table 2 - performance data indicates substrate condition and coating integrity on a scale; ie. structurally failed and poor integrity), but does not explicitly teach producing an alarm. Examiner takes official notice that it is old and well known to include alarms or other indications when reporting data. In the case of material coating, it would have been obvious to one of ordinary skill in the art at the time of the invention to include an alarm when performance of a coated material is substandard as a way to quickly notify appropriate personnel. By incorporating an alarm into the method and system of Greenfield recommendations can be made to remedy the coatings.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHNNA R. LOFTIS whose telephone number is (571)272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brad Bayat can be reached on 571-272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/jl/

6/7/09

/Bradley B Bayat/

Supervisory Patent Examiner, Art Unit 3624